



STATE OF MAINE
DEPARTMENT OF CONSERVATION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL R. LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
COMMISSIONER

PERMIT

COMMISSION DECISION IN THE MATTER OF

Atlantic Wind, LLC

Findings of Fact and Decision

APPEAL OF STAFF APPROVAL OF DEVELOPMENT PERMIT DP 4874

The Maine Land Use Regulation Commission, at a meeting of the Commission held on March 2, 2011 at Bangor, Maine, after reviewing the application and supporting documents submitted by Atlantic Wind, LLC for Development Permit DP 4874, pursuant to 12 M.R.S.A. § 681, *et seq.* and the Commission's Standards and Rules, and the appeal submitted by David P. Corrigan, finds the following facts:

1. Applicant: Atlantic Wind, LLC
Attn: Dave DeCaro
201 King of Prussia Road, Suite 500
Radnor, PA 19087
2. Appellant: David P. Corrigan
3. Date of Completed Application: August 23, 2010
4. Date of Staff Decision: October 19, 2010
5. Date Appeal Received: November 16, 2010
6. Location of Proposal: Concord Twp., Somerset County
Map 01, Lot #1 (wind energy easement)
Site #1 - 45.030269 °N, -69.949342 °W
Site #2 - 45.033699 °N, -69.980438 °W

7. Landowner: Plum Creek Maine Timberlands, LLC (10,224 acres)
Atlantic Wind, LLC (easement)
8. Zoning: (M-GN) General Management Subdistrict
9. Proposed Structures: Two Meteorological Testing Equipment Towers
10. *Appeal.* On November 16, 2010, appellant David P. Corrigan (“the appellant”) filed a timely appeal of the October 19, 2010 staff decision, approving Development Permit DP 4874, which authorizes Atlantic Wind, LLC (“the applicant”) to construct two temporary meteorological (“met”) towers in an M-GN General Management Subdistrict in Concord Township, Somerset County for the purpose of testing the wind resource. The appellant, who is a Registered Maine Master Guide residing in Concord Township, contends that he is aggrieved by the Commission’s decision to issue the permit. He states that the Commission should review the staff-issued permit because (1) a public hearing should have been held prior to issuance of the permit, and (2) the applicant has not complied with the terms of the permit, citing erosion that allegedly occurred in November 2010 when the land was cleared for installation of the towers.
 - A. *Public hearing request.* The Commission denied a request for a public hearing at the October 6, 2010 monthly business meeting. See Finding of Fact #11, below. At the time of the request for a public hearing, the appellant stated that he and the others who had signed the petition for a hearing were concerned about the potential for this project to cause erosion.
 - B. *Permit compliance.* The appellant has asked the Commission to review permit conclusions and conditions, and has provided photographs and a video from November 5 & 8, 2010, respectively, in support of his assertions regarding erosion at the sites.
11. *Request for a public hearing.* On October 6, 2010, after receiving comments from interested persons opposing the proposed temporary met towers and requests to hold a public hearing on Development Permit DP 4874 (and the associated DP 4875 for one met tower in adjacent Lexington Twp.), the Commission decided not to hold a public hearing. Specifically, the hearing was not granted because, while public interest had been expressed in this project, the information likely to be obtained by holding a hearing would not provide additional information necessary for the Commission or its staff to reach a decision on this proposal that could not be obtained through written comment. The requests received primarily expressed the belief and concern that temporary met towers are a precursor to a commercial wind energy development. A public hearing on Development Permit DP 4874, however, would have only addressed the permit requirements for temporary met tower proposals, and would not have addressed a commercial wind energy development at these sites. While the met towers at issue do test the wind resource, a permit for met towers does not authorize

commercial wind energy development, and to date no application for commercial wind energy development has been submitted for these sites.

Project description and review

12. *Project description.* Staff issued Development Permit DP 4874 to Atlantic Wind on October 19, 2010, authorizing two temporary met towers, each consisting of an unlit, 8-inch diameter steel pole 197 feet in height, supported by 12 guy wires. Each pole sits on a 7.7 square foot metal plate, but has no permanent foundation. Each met tower supports an anemometer, a wind vane, and a data logger; and pulleys are installed in the event the towers need to be used for other wildlife data collection such as bat monitoring. The guy wires are equipped with bird diverters and sleeves up to a height of 12 feet to reduce hazards to wildlife. The wind data collection equipment is powered by batteries and solar panels installed at the base of the tower. Each met tower is accompanied by a LIDAR¹ unit (4 feet x 4 feet x 6 feet) near the base of the tower, and used to gather additional wind speed data. The proposed structures would meet the minimum setback requirements in Section 10.26,D of the Commission's Land Use Districts and Standards.

A. *Locations and elevations.* The met tower sites are located in the north-central and northwestern portion of Concord Twp. The met tower at Site #1 is located on Fletcher Mountain at elevation 1,445 feet above mean sea level (ft msl); and the met tower at Site #2 is located on a unnamed ridgeline located to the west of Site #1 at elevation 1,390 ft msl.

B. *Site access, clearing and soil disturbance.* To install each met tower, the conditions of the permit require that the cleared area not exceed 2.8 acres for each met tower. See Permit Condition #8.

(1) The permit requires that access to the sites be by existing logging roads and skidder trails, or overland. No new permanent access roads or trails are authorized by the permit. See Permit Condition #9. Further, the permit requires that installation of the met towers be done when the soil is not saturated unless installation under saturated soil conditions is unavoidable. If installation is made under saturated conditions, the permit requires the applicant to use slash or wood chips where the soil is soft enough to rut under the weight of heavy equipment. See Permit Condition #12.

(2) Other than up to approximately 100 sq ft per guy wire if a concrete block type anchor is used, the applicant did not propose areas of filling or grading. No wetland or vernal pool alterations, or stream crossings were proposed by the applicant, and none were authorized by the permit. See Permit Conclusion #1, Conditions #8 & #12.

¹ LIDAR unit – An active remote sensor based on Light Detection and Ranging technique used to measure the absolute wind speed.

- (3) The permit requires that, if installation of the met towers or access to the sites will require more than minimal soil disturbance, then erosion and sedimentation control structures must be installed and maintained prior to, during, and after construction. See Permit Condition #11.
 - (4) The permit requires that the applicant comply with the Commission's General Standards for clearing, filling and grading, and erosion and sedimentation control. See Permit Conditions #3 to #5.
 - (5) The permit concludes that, provided the applicant complies with the conditions of the permit, the applicable statutory criteria will be satisfied. See Permit Conclusion #4.
 - (6) Finally, the permit requires the applicant to contact LURC immediately if any erosion or sedimentation occurs during construction, notifying LURC of the problem and describing all proposed corrective measures. See Permit Condition #14.
13. *Installation of the met towers.* Following the November 2010 complaints regarding erosion at the sites, staff and the State Soil Scientist inspected the sites. On January 24, 2011, the applicant submitted a report to LURC staff, documenting the installation of the met towers. See Permit Condition #16. The applicant's installation of the met towers is currently under review by staff.

Review Criteria

- 14. Pursuant to LURC's Chapter 4, Section 4.07(1), "[a]ny person aggrieved by a decision of the staff has a right to a review of that decision by the Commission. A request for such a review must be made in writing within 30 days of the staff decision."
- 15. Pursuant to Section 10.22,A,3,a(6) of the Commission's Land Use Districts and Standards, surveying and other resource analysis are uses allowed without a permit in a (M-GN) General Management Subdistrict.
- 16. Pursuant to Section 10.22,A,3,c(29) of the Commission's Land Use Districts and Standards, other structures, uses, or services that are essential to the uses listed in Section 10.22,A,3,a through c are allowed with a permit in a (M-GN) General Management Subdistrict.
- 17. Pursuant to Section 10.26,F of the Commission's Land Use Districts and Standards, the maximum building height shall be 100 feet for commercial, industrial, and other non-residential uses involving one or more buildings. Features of buildings which contain no floor area such as chimneys, towers, ventilators and spires, may exceed the maximum height with the Commission's approval.
- 18. Pursuant to Section 4.04(5) of the Commission's Rules of Practice, interested persons may request a hearing on a permit application. The Rules provide in relevant part: "The

Commission shall consider all request for a hearing submitted in a timely manner. Hearings on an application are at the discretion of the Commission unless otherwise required by the Constitution of Maine or statute. In determining whether a hearing is advisable, the Commission shall consider the degree of public interest and the likelihood that information presented at the hearing will be of assistance to the Commission in reaching its decision.”

19. The facts are otherwise as represented in the application for Development Permit DP 4874 and supporting documents.

Based upon the above Findings, the Commission concludes that:

1. The appeal to the Commission of the staff decision to issue Development Permit DP 4874 was timely, as it was received at the LURC Augusta office within 30 days of the issuance of the permit.
2. The appellant does not contend that the staff decision to issue the permit was contrary to the substantive regulatory review criteria, as set forth above, that are applicable to permitting met towers in the M-GN. Rather, he contends the Commission should reverse the staff decision because as a procedural matter a public hearing should have been held prior to issuance of the permit, and because he alleges that the applicant caused erosion at the sites in violation of the terms of the permit when it accessed the sites.
 - A. *Commission’s denial of public hearing.* As set forth above, the Commission has already determined that it would not hold a public hearing with respect to the met towers application. Under the Commission’s Rules of Practice, the decision whether to hold a public hearing is discretionary. The Commission’s determination, that while the public had expressed an interest in the permit application it was unlikely that a hearing would assist the Commission, was not an abuse of discretion. The Commission concluded the public interest primarily centered on commercial wind energy development, not the met towers application at hand, and that any additional information could be effectively received by way of written comment without the need for a public hearing. In view of these facts and circumstances, and the finite time and resources of the voluntary citizen Commission, the Commission’s decision not to hold a public hearing was reasonable.
 - B. *Alleged violations of the permit.* Pursuant to 12 M.R.S.A. § 685-C(8), the Commission has enforcement authority with respect to violations of permits, including but not limited to the authority seek civil penalties, equitable relief, and permit revocation in an appropriate court of law. Thus, while the Commission has prosecutorial discretion with respect to permit violations, appellant’s allegations with respect to permit violations does not provide the Commission, in the context of an appeal, with a legal basis to revoke a permit.

Therefore, the Commission DENIES the appeal of Development Permit DP 4874 by David P. Corrigan, and AFFIRMS the staff decision, issuing DP 4874. All findings, conclusions, and conditions of the October 19, 2010 staff decision remain in full force and effect.

Nothing in this decision shall be construed to release the applicant from any liability or responsibility arising from any violation, including but not limited to any identified by LURC staff and consulting state agency staff, or to be considered a waiver of the authority of the Commission or the state to fully pursue or prosecute any such violations.

In accordance with 5 M.R.S.A. section 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

DONE AND DATED AT BANGOR, MAINE THIS 2nd DAY OF MARCH, 2011.

By: _____
Catherine M. Carroll, Director